IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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State of Rajasthan Versus Shri L.D.Kiradu

S.B.CRIMINAL REVISION PETITION NO. 718/2007

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Date of Order : 06/08/2007

PRESENT

HON'BLE MR. H.R.PANWAR, J.

Mr. K.L.Thakur, Addl. Advocate General for the petitioner.
Mr. L.D.Kiradu respondent present along with Mr. Pradeep Shah.

BY THE COURT:-

By the instant criminal revision petition under Section 397 r/w Section 401 Cr.P.C., the State of Rajasthan through Superintendent of Police, Nagaur, has challenged the order dated 6.7.2007 and notice dated 9.7.2007 passed by respondent Chief Judicial Magistrate, Nagaur (for short 'the trial court' hereinafter) in Criminal Case No. 01/2007 "State Vs. Nand Kishore" arising out of FIR No.342/2004 P.S. Nagaur for the offences under Sections 420 and 273 IPC.

I have heard learned Additional Advocate General appearing for the State and counsel for the respondent. Carefully gone through the order impugned dated 6.7.2007 as also notice

dated 9.7.2007.

It is contended by learned Additional Advocate General appearing for the State that in the said FIR, the police rightly registered the case for the offences under Sections 420 and 273 IPC as in the premises owned and possessed by the accused therein, on being checked by the police, the accused were found selling/ exposing for sell the food article which is noxious in nature by using deceitful and fraudulent labels of the various brands. So far as the offence under Section 7/16 of the Prevention of Food Adulteration Act is concerned, the police is neither empowered to investigate nor to file complaint for such offence and therefore, it was left for the food inspector. If the food inspector found that the food articles recovered and sample of the food article taken by him is found adulterated, it was for the food inspector to file the complaint for that offence. The occurrence is of 18.7.2003 and at the relevant time, it was Vidhya Prakash Circle Inspector, Police Station- Kotwali, Nagaur who registered the FIR and conducted the investigation. The Superintendent of Police, Nagaur Mr. Umesh Dutta was neither the Superintendent of Police at the relevant time at Nagaur nor is accountable in any manner. Even otherwise, there is no illegality in conducting the investigation and filing the challan. According to learned Additional Advocate General, the offences have rightly been registered, investigated and challan has also

rightly been filed for the correct offences alleged to have been committed by the accused therein. It is submitted that the order impugned more particularly the notice dated 9.7.2007 issued by the respondent is without jurisdiction and outcome of malice. It is further submitted that it was not open for the respondent to have commented on the conduct of the investigation agency and more particularly, the Superintendent of Police, Nagaur. Learned Additional Advocate General has relied on decision of Hon'ble Supreme Court in State of U.P. Vs. Mohd. Naim AIR 1964 SC 703, in Niranjan patnaik Vs. Sashibhusan Kar and another AIR 1986 SC 819, in S.K.Viswambaran Vs. E. Koyakunju and Others AIR 1987 SC 1436 and a decision of this Court in Bhikam Chand Vs. The State of Rajasthan, 2006 (1) Cr.L.R. (Raj.) 90.

The respondent failed to justify the order and notice and also failed to point out the provision which empowers the respondent to issue such a notice.

In State of U.P. Vs. Mohd. Naim (supra), the Hon'ble Supreme Court held that it is equally necessary that in expressing their opinions judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalizations defeat the very purpose for which they are made. It has been judicially recognized that in the matter of making disparaging remarks against persons or

authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

This view has been reiterated by Hon'ble Supreme Court in S.K.Viswambaran Vs. E. Koyakunju and Ors. (supra).

In Niranjan Patnaik Vs. Sashibhusan Kar and another (supra), the Apex Court held that it is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct and it was further held that the adverse remarks made against the appellant therein were neither justified nor called for.

On careful perusal of the order dated 6.7.2007 and notice dated 9.7.2007, in my view, neither the order was warranted under law nor the remarks made by the respondent against the police investigation agency and the Superintendent of Police, Nagaur, are justified and called for and therefore, the same are liable to be set aside.

During course of arguments, learned Additional Advocate General has also pointed out that the respondent has been issuing such type of notices to various executive authorities. He has placed on record the notice issued by the respondent to the District Collector, Nagaur dated 27.6.2007, notice issued to District Superintendent of Police, Umesh Dutta dated 28.6.2007, Notice dated 3.7.2007 issued to Asstt. Sub Inspector, Kotwali, Nagaur, Notice dated 7.7.2007 issued to Executive Engineer, Public Works Department, Nagaur. Since these orders and notices have not been challenged in this petition, therefore, I need not to go into their legality and propriety and are left open to challenge.

In the result, the revision petition is allowed. The order impugned dated 6.7.2007 and notice dated 9.7.2007 are set aside.

(H.R.PANWAR),J.

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